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Developing a Municipal Code

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A Guide for Municipalities in Ontario



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DEVELOPING A MUNICIPAL CODE

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I. INTRODUCTION

This guide has been produced as part of a series of management-information publications produced by the Advisory Services Branch, Local Government Division, Ministry of Treasury, Economics and Intergovernmental Affairs, to provide basic information on the development of a municipal code.

Its purpose is not to provide a detailed step-by-step guide to preparing a municipal code, but to give a general understanding of such a code and what is entailed in its development.

Every effort has been made to ensure accuracy and clarity. However, the information contained here is not intended as a substitution for reference to the relevant statutes.

II. WHAT IS A MUNICIPAL CODE?

Webster's dictionary describes a code as a systematic statement of a body of law.

Codes have been used in Canada for many years. The federal Criminal Code, for example, represents all of the laws affecting criminal conduct passed by the federal government.

To gain a better understanding of what a code is, it may be helpful to look at some of the common elements that are found in most of them. Codes are set out in either permanent bound or loose-leaf editions. They are organized and categorized to make sure that to the extent possible all the laws are grouped by subject. A cross-referenced index is provided to make access to particular subjects more convenient. Any new legislative enactments are in a form that either add, amend, or delete sections of the code. These codes are periodically consolidated and republished to include the new amendments.

Many municipal administrators feel it is imperative that the multitude of original general by-laws and amendments be readily available to the public, council members and administrators; otherwise needless confusion, delays, expense and ill feelings will result.

Too often it is difficult, at best, for a citizen to determine the current status of a by-law and the latest amendments under a system that does not bring together its by-laws in appropriate groupings suitably indexed. Often duplication and conflicting provisions exist where one by-law is enacted and officials are unaware of an earlier by-law dealing with the same subject.

A Municipal Code is a bound volume containing a comprehensive general by-law dealing with all or part of the matters within the jurisdiction of the council. It is organized systematically for purposes of continuity and is accompanied by a detailed cross-referenced index. Future amendments are in the form of additions or deletions. The amendments are usually printed and circulated in such a manner as to allow them to be included in the published version of the overall code.

1. Benefits

The development of a code provides the advantage of having all of the enactments regarding a specific subject all together in one volume. This will help to ensure that out-of-date provisions are deleted when new ones are enacted. Also, much time is saved in determining regulations affecting a given subject. Periodically old by-laws, long

forgotten, turn up and are found to be in conflict with those passed more recently. Public access to by-laws affecting them can be improved when all current legislation is contained in one well indexed volume.

During consideration of amendments when a code is used, politicians and administrators have a clearer view of the existing situation and the impact of amendments.

2. Existing Practices In Ontario

One of the major hurdles faced in any attempt to develop a comprehensive consolidated by-law is the need to re-obtain approvals from outside agencies. For example, if a municipality wanted to consolidate and codify its zoning by-laws it would have to re-apply to the Ontario Municipal Board for approval of the new consolidated by-law even though approvals had been received for each of the original by-laws now being consolidated.

To date in Ontario there have been three basic systems used by municipalities in their attempts to consolidate and codify their by-laws.

Perhaps the system most often used by municipalities to draw together the various by-laws on a given subject is the passing of a comprehensive by-law

consolidating all previous by-laws dealing with the subject. They must also proceed to gain or re-gain all the necessary approvals from outside agencies as previously cited in the case of zoning by-laws. This new consolidation is printed and circulated to interested parties (councillors, administrators, libraries and some solicitors). The by-law is usually known unofficially as The (name of municipality) Zoning By-law.

As required, amending by-laws are enacted. Most of the municipalities using this approach merely circulate copies of the amending by-laws to holders of copies of the original by-law. These are usually attached to the back of the consolidated by-law.

In a short time the number of attachments becomes unwieldy. Each time reference is made to a section of the comprehensive consolidated by-law it is necessary to also sort through all of the attached amending by-laws to make sure the referenced section has not been amended. Soon, the users of the by-law ask for the enactment of a new consolidating by-law. This is usually put off because of the problems encountered in re-obtaining approvals.

A similar system to the one above is used in some municipalities. They proceed through the same steps in enacting a comprehensive consolidating by-law and seeking all necessary approvals. However, as the comprehensive consolidated by-law is amended by future enactments of the council, these amendments are published in a form that allows them to be inserted directly in the circulated copies of the comprehensive by-law replacing the entire page upon which the amended section appeared. The official consolidated by-law is unchanged. Only the unofficial circulated office-use copies are changed in this way. This system at least keeps the circulated copies of the by-law up to date including amendments.

The third method that has been tried involves the creation of an unofficial consolidation for office use only. Instead of actually enacting a comprehensive consolidated by-law and obtaining the necessary approvals, the by-law is merely drafted and circulated for staff use. It is periodically brought up to date in the same manner as the second example above. It is used strictly as a resource document for staff and has absolutely no official status.

3. Re-Approval Requirement Removed

Effective December 7, 1976 the following amendment to The Municipal Act, R.S.O. 1970, Chapter 284, section 242, came into force:

"Where the council of any municipality passes a comprehensive general by-law dealing with all or any of such matters within its jurisdiction as the council considers desirable to include therein (which by-law may be known as "The [name of municipality] Municipal Code") and such by-law consolidates and includes therein provisions of any by-law previously passed by the council,

- (a) the provisions in the comprehensive general by-law shall be deemed to have come into force on the day the original by-law came into force; and*
- (b) any condition precedent or subsequent or the approval of any authority external to the council required by law before the original by-law came into force shall, where such condition was satisfied or approval obtained in respect of the original by-law, be deemed to have been satisfied or obtain in respect of the corresponding provision in the comprehensive general by-law in all respects as though the condition had been satisfied or the approval obtained in respect of that provision in the comprehensive general by-law."*

The direct result of this amendment is the elimination of the need to seek re-approval for sections of a comprehensive consolidated by-law that were previously approved. This removes a major obstacle in the path of those municipalities that wish to proceed with the development of a comprehensive by-law that may be known as "The [name of municipality] Municipal Code".

III. SOME STEPS IN ESTABLISHING A MUNICIPAL CODE

1. General and Special By-laws

If it is decided to proceed with a full-scale municipal code or the smaller specialized codes, such as zoning or licensing, it will be necessary to determine which types of by-laws to consolidate and codify and which can be left out. By-laws are often grouped as general or special.

A general by-law could be described as being of a permanent or continuing nature that applies equally to all residents of a municipality. Examples of a general by-law would be:

1. Zoning
2. Licensing of Trades
3. Traffic Control

Usually these by-laws provide for a specific penalty for violations of their requirements.

A special by-law could be described as being of limited application or having a specific period of time after which its function is terminated. Examples of special by-laws are:

1. Authorizing the execution of
an agreement
2. Debentures
3. Local Improvements
4. Conveyance of Land

The nature of a code lends itself to the inclusion only of general by-laws. Special by-laws are rarely included.

Some municipalities have found that the creation of a full, all-encompassing code is too large a project. They may decide on starting with a limited code on zoning or licensing matters. This approach may, however, represent a false economy. In order to select either the planning by-laws or licensing by-laws, a review will still have to be made of all the local by-laws. This review is the largest single task and most likely the most time-consuming. Each time the municipality decides to add another area to its code, such as traffic control, the by-laws would have to be reviewed again. It would appear that in the long run it may be more economical to proceed with the development of a full code right from the beginning.

2. Selection of Personnel

Where a council decides to proceed with the development of a code, the first step would be to select the personnel to carry out the project. Past experience indicates that, in most circumstances, it is desirable that overall authority and responsibility be given to one individual. In the smaller

municipalities this would likely be the clerk. In those municipalities that have access to a solicitor, it could be beneficial to have him review the draft before it is submitted to council. Where sufficient staff is available, it is likely that the clerk would assign various segments of the overall project to other staff members while he retains overall direction of the project.

3. Selection of Topical Groupings

Next, it is necessary to develop a series of topical headings that will be used to subdivide the code. At this stage it is possible to block out and assign tentative section numbers. For example:

<u>PART</u>	<u>SUBJECT</u>	<u>SECTIONS</u>
I	<u>General Provisions</u>	1000-1999
	- establishment of code	
	- definitions	
	- establish sections	
	- general penalty clause	
II	<u>Administration</u>	2000-2999
	- rules of procedure	
	- appointment of officers	
	- duties of officers	
	- personnel matters	
	- finance (purchasing- budget procedures)	

<u>PART</u>	<u>SUBJECT</u>	<u>SECTIONS</u>
III	<u>Traffic and Vehicles</u> <ul style="list-style-type: none">- parking- fire routes- speed limits	3000-3999
IV	<u>Licences and Permits</u> <ul style="list-style-type: none">- building permits- business licences- inspection fees	4000-4999
V	<u>Planning</u> <ul style="list-style-type: none">- zoning- lot levies	5000-5999

These topical headings are designed to give an idea of the breakdown but certainly do not represent all the possible combinations. Local preference will play the major role in deciding on the topic headings to be used.

4. Chronological Table of By-laws

It is generally beneficial to keep a chronological table of by-laws simply to keep track of them and, ultimately, their disposition when incorporated into the code. This type of document may prove useful as a future reference if the history of a provision in the code is challenged. Here is an example of a chronological table of by-laws:

CHRONOLOGICAL TABLE OF BY-LAWS						
BY-LAW NUMBER	TITLE OR SUBJECT	DATE PASSED	AMENDED BY - REPEALED BY BY-LAW NUMBER	NUMBER OF ANY BY-LAW REPEALED BY THIS BY-LAW	GENERAL OR SPECIAL	DISPOSITION
1	Tax Levy - 1875	Mar. 1 1875			Spec.	Not Included
2	Animals Running at large	May 12 1875	230 - Repealed		Gen.	Not Included
3	Speed Limits	Aug. 14 1875	675 - Amended		Gen.	Sec. 3880 - 3897 of code

A table such as this allows a check of the completeness of the compilation work. It also provides a ready reference table to determine which by-laws were included in the code and under which sections. An additional benefit is that a complete list of all the special by-laws is available when needed.

5. Review of Existing By-laws

Using a chronological table, the person responsible for the project or his designate should now review all the by-laws. They should be categorized as general or special so that the general ones may be considered for inclusion in the code.

Those by-laws that are to be included should be carefully reviewed to eliminate contradictions with the terms of other by-laws. Many conflicting sections may be found during this process.

It may be beneficial to go to council at this point and suggest that certain housekeeping by-laws be enacted and outside approvals obtained first, before the consolidation is completed.

6. Penalty Provisions

It may be advantageous to group all penalty provisions in one section of the code for ease of reference. This might also lead to more uniform penalty clauses than would exist where a variety of by-laws are in use.

7. Numbering the Sections

Many systems have been used in numbering legislative codes. An important feature of any numbering system is the ability to add sections from time to time. In the topical headings discussed on pages 10 and 11, a total of one thousand sections have been set aside for each subject grouping. In the bulk of cases this will be sufficient for some time to come. One problem that may occur is the numbering of a newly enacted section that relates to an existing section. If the next section number

that follows is already in use, the affected section could be broken down by the use of a decimal system.

Example: Section 2445 (Existing Section)

Section 2445.1 (New Section)

Section 2446 (Existing Section)

In some cases the need to break down existing sections can be reduced by careful wording of the by-law that amends the code. Instead of a straightforward addition, the amending by-law may in some cases provide that the existing section be entirely rewritten to include the new provisions. This practice might reduce the number of times that existing section numbers have to be broken down and may facilitate the process of periodic consolidation.

8. Index and Table of Contents

The development of a properly cross-referenced index is considered essential to the usefulness of the code. It is also a major task that will require a good deal of time and energy. One of the reasons for development of the code is to improve accessibility to the enactments of Council. A well designed index should facilitate speedy and complete reference to the contents of the code.

In some cases great care has been taken in the development of a good index, only to have it fall into disuse because it was not revised and kept up to date as changes were made to the code.

The index is an aid to the use of a legal document, and for those municipalities with access to a solicitor it may be beneficial to have him review the draft index.

It is generally useful to include a table of contents at the beginning of the code. This table of contents serves to identify the subject groupings as set out on pages 10 and 11. The table of contents should not be considered as a substitute for the more detailed index.

9. Format

Copies of a municipal code will likely be used primarily by solicitors, administrators, councillors and interested citizen groups.

Careful consideration should be given to the method of distribution of the code and future revisions.

In order to recoup some of the costs involved in supplying copies of the code, most councils charge a fee. In addition, a municipality may periodically supply revised pages that incorporate new amendments. These pages are usually designed so that they can be inserted into the copy of the code and the page so replaced can be removed and discarded. This service is generally supplied on a subscription

basis for a predetermined fee. The most common length of time for the subscription period is one year, after which a renewal must be obtained.

The number of times that amendments are to be circulated depends largely on the number of changes that have been made. Perhaps the time between circulation of changes should not exceed six months in order to maintain the currentness of the code.

Two of the more common methods of binding a code are loose-leaf and book form. Some municipalities prefer the solid-bound book form because it ensures that pages are not easily misplaced. When changes are circulated they must be set loose in the back of the book. This necessitates first checking the section in the code and then the list of changes. Fortunately, these lists of changes are compiled in order of sections so that it is not a difficult task to complete this extra check. An additional advantage of this method is that the reader of the code always has access to the wording of a section as it read before and after the amendment.

The main advantage of the loose-leaf format is the ease with which revision pages may be installed. Municipalities that use this format find

it advisable to take precautions to see that the subscriber can check to make sure his code is up to date. One way to help achieve this is to ensure each page of revisions is clearly dated. At the time that several pages of additions are circulated they are accompanied by a list that shows the dates that should appear on the bottom of every page in the code. This list will allow a subscriber to check his copy of the code to see if the dates correspond. If they do not, he could contact the municipality for copies of the new pages required to replace those that, for whatever reason, were not previously changed.

10. Sample Code

Each municipality will have different requirements for its code and it is not possible to develop a standard that will suit all situations. Attached as appendix 'A' is a sample portion of a code. This sample is for the purpose of demonstrating some of the concepts set out in the preceding discussions and it is not suggested that it is suitable in total for any one municipality. Also attached as appendix 'B' is a sample of a by-law to amend a section of the code.

APPENDIX 'A'

A SAMPLE PORTION OF A MUNICIPAL CODE

THE CORPORATION OF THE

BY-LAW NO.

A By-law for establishing The _____
name of
_____ Municipal Code and to regulate
municipality
the proceedings of the Municipal Council.

The Municipal Council of the Corporation of the
_____, enacts as follows:
name of municipality

PART I: GENERAL PROVISIONS

DIVISION (1) - THE CODE

Title

1100 This By-law shall be known as The "_____
name of
_____ Municipal Code."
municipality

Interpretation

1101 In this By-law, unless the context otherwise requires: -

(1) "Code" means The _____
name of municipality
Municipal Code:

"Clerk" means the Clerk of the Corporation of
the _____:
name of municipality

"Collector" means the Collector of the Corporation
of the _____:
name of municipality

"Council" means the Head of Council and Councillors
of the Corporation of the _____:
name of municipality

"Municipality" means the Corporation of the
name of municipality :

"Person" includes any corporation, partnership, company association, or party, and the heirs, executors, administrators, or other legal representatives of such person, to whom the context can apply according to law:

"Special By-law" means a by-law which is temporary in character or related to a special purpose, and includes, but shall not be limited to, by-laws relating to a particular election, a debenture for borrowing a certain sum of money, levying a special assessment, providing for the annexation of specific additional territory to the Municipality, the making of an individual contract or agreement and the granting of a specific licence:

- (2) (a) Words importing the singular number of the masculine gender only shall include the plural and the feminine, and the converse:

By-laws

- 1102 (1) Every by-law passed by the Council, except special by-laws, shall constitute an amendment to the Code.
- (2) The classification of a by-law as a special by-law shall, notwithstanding the definition of a special by-law in section 1101 (1), be in the direction of the Council.
- (3) The Council may determine that any special by-law of general significance to the Municipality shall constitute an amendment to the Code and be incorporated therein.
- (4) Every by-law amending the Code shall specifically state the part and section or sections of the Code that the by-law adds, alters or repeals.

Contents

- 1103 This Code is divided into the following parts and sections, relating to the following subjects:

<u>PART</u>	<u>SUBJECT</u>	<u>SECTION</u>
I	- General Provisions	1000-1999
II	- Administration	2000-2999
III	- Traffic and Vehicles	3000-3999
IV	- Licences and Permits	4000-4999
V	- Planning	5000-5999

Maintenance

- 1104 The Council shall determine by resolution the manner in which the Code is to be kept and maintained.

DIVISION (2) - PENALTIES

- 1200 (1) Every person guilty of an offense against the Code shall, on conviction thereof, when no other penalty is provided, forfeit and pay a penalty not exceeding (one thousand dollars) and costs.

APPENDIX 'B'

A SAMPLE OF A BY-LAW TO AMEND A
SECTION OF A MUNICIPAL CODE

THE CORPORATION OF THE _____

BY-LAW NO. _____

A BY-LAW to amend The _____
name of municipality
Municipal Code to make provisions for the conducting
of Council meetings.

The Council of the Corporation of the _____
name of
_____ enacts as follows:
municipality

1. Section 2240 of The _____
name of municipality
Municipal Code is amended by designating the
present section as subsection one (1) and by
adding the following as subsection two (2):

"(2) No member of Council may speak on an
issue for a second time if any other
member of Council has not had an
opportunity to speak."

Read a first and second time this _____ day of _____,
19__.

Read a third time and finally passed this _____ day
of _____, 19__.

Mayor

Clerk

Assistance For Municipalities

The Local Government Division of the Ministry of Treasury, Economics and Intergovernmental Affairs (T.E.I.A.) maintains five Regional Offices that are available to be of assistance to Ontario municipalities. The address of each of the Regional Offices is listed below:

CENTRAL ONTARIO REGIONAL OFFICE

T.E.I.A.
47 Sheppard Avenue East
2nd Floor
WILLOWDALE, Ontario
M2N 5X5
(416) 226-6574

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T.E.I.A.
244 Rideau Street
OTTAWA, Ontario
K1N 5Y3
(613) 232-9446

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P3A 1Z2
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	<u>Title</u>	<u>Price</u>
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a)	Project Overview Statement	\$1.00
b)	Goals for Dallas "A"	\$2.00
c)	Goals for Dallas "B"	\$2.00
d)	Developments in the Management of Local Government	\$2.00
e)	The LGMP Experience: Phase I	\$2.00
2.	<u>Managers For Local Government: A Study</u>	
a)	Report #1 The Issues	No charge
b)	Report #2 The Design	No charge
c)	Report #3 The Data Base	No charge
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